PT 98-81
Tax Type: PROPERTY TAX
Issue: Educational Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

VICTORY GARDENS THEATER and COMMUNITY ARTS FOUNDATION, APPLICANTS

v.

DEPARTMENT OF REVENUE STATE OF ILLINOIS

94-16-1367
(Circuit Court of Cook County Docket No. 96 L 51154)

Real Estate Exemption for 1994 Tax Year

P.I.N.: 14-33-110-003

Alan I. Marcus, Administrative Law Judge

RECOMMENDATION FOR DISPOSITION PURSUANT TO REMAND ORDER

This matter comes to be considered pursuant to the Order of Judge Alexander P. White in that Administrative Review matter docketed in the Circuit Court of Cook County as 96 L 51154. Judge White's Order, entered August 13, 1998, directed that:

> This matter is remanded to the Department of Revenue with instructions for the Agency to apply the case of Highland Park Women's Club v. Department of Revenue, 206 Ill. App.3d 447 (2nd Dist. 1990) examine the factors therein, determine if the factors present in Highland Park are present in the instant case, and for the Agency to reconsider its prior decision.

The underlying controversy arose when Victory Gardens Theater/Community Arts Foundation (hereinafter collectively referred to as the "applicants")[1] filed a real estate tax exemption complaint with the Cook County Board of (Tax) Appeals (hereinafter the "Board") on April 17, 1997. The Board reviewed applicant's complaint, which sought exemption from 1994 real estate taxes, and subsequently recommended to the Department of Revenue (hereinafter the "Department") that the requested exemption be denied. (Dept. Ex. No. 1).

The Department later accepted this recommendation via an initial determination dated January 25, 1996. Said determination denied exemption on grounds that the subject property, (identified by Cook County Parcel Index Number 14-33-110-003), was not in exempt ownership and not in exempt use. Applicants subsequently filed a timely appeal to this denial and thereafter presented evidence at a formal evidentiary hearing.

On July 23, 1996, Administrative Law Judge Alan I. Marcus issued a Recommendation for Disposition which recommended that the Department's initial determination be affirmed. The Director accepted the ALJ's recommendation on August 28, 1996, whereupon applicants filed a timely petition for administrative review. This Recommendation for Disposition results from the remand order entered in that action.

After carefully studying Judge White's remand order, and thoroughly reviewing the record, I have concluded that the holding in Highland Park Women's Club v. Department of Revenue, 206 Ill. App.3d 447 (2nd Dist. 1991) (hereinafter "HPWC"), does not alter any of the conclusions set forth in my original Recommendation for Disposition. HPWC is factually and legally distinguishable from the present case in that: (1) the primary issue decided therein was

1. Victory Gardens Theater shall hereinafter be referred to as "VGT," and the Community Arts Foundation shall hereinafter be referred to as "CAF," at least when it becomes necessary to separately identify each of the applicants herein.

whether a whether a private citizen/taxpayer had standing to file complaints challenging tax exemptions granted to the Highland Park Women's Club and the Ravinia Festival Association (hereinafter "Ravinia") for the 1985 tax year; (2) in analyzing that issue, the court accepted, as a given, the Department's *previous* determination that Ravinia qualified as an "institution of public charity" (HPWC, *supra* at 447); and (3) for this reason, the substance of the court's analysis did not focus on the whether Ravinia qualified for exempt status, but rather, centered on the statutory provisions under which the citizen/taxpayer claimed standing.

In substance, these provisions stated that: (1) in counties with a population of less than one million, assessments will be reviewed by a three member board of review;[2] (2) in counties with a population of one million or more, (to wit, Cook County), this function is performed by a two member board of appeals;[3] and (3) in counties containing one million or more inhabitants, complaints that any particular real property, described therein, is over assessed or under assessed or is exempt may be made by any taxpayer.[4]

The statute did not, however, contain any provision authorizing similar complaints from taxpayers residing in counties containing less than one million inhabitants. On this basis, the HPWC court held that the citizen/taxpayer therein, who resided in Lake County, lacked standing to challenge property tax exemptions granted to others who owned property in the same county.[5]

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2. Ill. Rev. Stat. ch. 120, ¶ 489, now codified at 35 **ILCS** 200/6-5.

3. Ill. Rev. Stat. ch. 120, ¶ 492 now codified, with certain modifications that do not affect the outcome of this case, at 35 **ILCS** 200/5-5.

4. Ill. Rev. Stat. ch. 120, ¶ 598 now codified, with certain modifications that do not affect the outcome of this case, at 35 **ILCS** 200/16-115.

5. Those interested in the details of the court's analysis of the standing question and the issues associated therewith are referred to HPWC, *supra*, at 455-463.

The court then rejected other arguments raised by the citizen/taxpayer, principal among which was that the denial of standing violated the citizen/taxpayer's equal protection rights in that the relevant statute would have provided him with standing if he resided in Cook County. This argument failed to recognize that the allegedly flawed classification rested, *inter alia*, on the General Assembly's reasonable determination that "… because Cook County is so much larger than other Illinois counties, errors in assessing property and in granting or denying property tax exemptions were more common than in other Illinois counties." HPWC, *supra* at 459. The court then observed that:

> The legislature could have also reasonably determined that many such errors would never come to the attention of the board of appeals because of Cook County's size unless taxpayers could complain of exemptions granted to others and the under assessment of other taxpayer's property. This could rationally be considered unnecessary in smaller counties where the board of review would be much more likely on its own to take notice of and correct such errors. Based upon the differing situation in Cook County and other Illinois counties, the legislature could reasonably have concluded that the population classification in this case would advance the statutory objective of creating fair, orderly procedures relating to the assessment and collection of property taxes.

Id.

The equal protection arguments of the applicants in this instant cause do not arise from denials of standing attributable to allegedly unconstitutional population classifications. Rather, they rest on the flawed premises that applicants are similarly situated to Ravinia in that they qualify as exempt entities and use the subject property for exempt purposes. These premises are flawed because my original Recommendation set forth numerous failures of proof which led me to conclude that neither VGT nor CAF qualified as an "institution of public charity" within the

meaning of 35 **ILCS** 200/15-65. Said Recommendation further detailed other failures of proof which led me to conclude that the subject property did not qualify for the "school" exemption set forth in 35 **ILCS** 200/15-35. Consequently, applicants are *not* similarly situated to Ravinia, an entity which the *Department* found to qualify as a "charitable organization" *prior to* the administrative review in HPWC. HPWC, *supra* at 447; *See also*, Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542, 548 (1986).

The HPWC court also held that lands used for food stands and a gift shop qualified for exemption under the then applicable-version of Section 200/15-65.[6] The court held in favor of exempting these lands on grounds that they were incidental to Ravinia's overall charitable purpose. Again, that court's holding and reasoning are inapplicable herein, primarily because the Department, via my initial Recommendation for Disposition, has *not* concluded that the applicants herein qualify as charitable organizations. HPWC, *supra* at 447. Thus, these applicants' operations and those of Ravinia are not comparable.

Even if the status of applicants herein and Ravinia were similar, this record does not support the conclusions that any "charitable" or "beneficent" aspects of VGT's[7] endeavors were the primary focus of: (1) its operations during the tax year in question; and (2) its actual uses of the subject property throughout same. These finding were necessary, and therefore implicit, in the Department's overall conclusion that Ravinia qualified for exempt status. *See*, Rogers Park Post No. 108 v. Brenza, 8 Ill.2d 286 (1956); Morton Temple Association v. Department of

6. That version was found in Ill. Rev. Stat. 1985, ch. 120, ¶ 500.7.

7. Analysis found at pp. 13-15 of my original Recommendation establishes that CAF failed to present sufficient evidence of its exempt status. Moreover, the overwhelming majority of the remaining evidence focused on VGT's operations and use of the subject property. Consequently, it appears that any remaining analysis must focus on VGT.

Revenue, 158 Ill. App.3d 794 (3rd Dist. 1987); Albion Ruritan Club v. Department of Revenue, 209 Ill. App.3d 914 (5th Dist. 1991).

This record establishes that VGT provided approximately 5,844 subsidized tickets during its 1994-1995 season and that these subsidies ranged from 100% to 50% off full-priced tickets. (R. pp. 172, 220). However, it does not contain any financial or other evidence allowing me to compare the expenses associated with these subsidies to expenses associated with applicant's overall theater operations.

This failure of proof does not allow me to determine whether the expenses associated with admissions granted pursuant to these subsidies were incidental to those associated with subscribers and others who purchased full priced tickets. The record only establishes that: (1) "[a] subscription base of 3,533 [patrons] attended the productions supplemented by over 13,500 single ticket buyers"; and (2) total mainstage attendance for VGT's 1993-1994 season was 26,841. (R. pp. 167, 172).

Under the well-settled rules governing VGT's burden of proof, all inferences must support taxation and all unproven, disputed or doubtful matters must be resolved against the applicant. People Ex Rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987); Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App.3d 678 4th Dist. 1994). Applicant has not proven that any of its season subscribers or single ticket buyers received discount tickets. Accordingly, I must infer that these individuals paid full price, and therefore, were not included in any "charitable" or "beneficent" aspects of VGT's overall operations.

Furthermore, the following computations disclose that those not so included accounted for 63% of the overall attendance in applicant's mainstage theater:

FACTOR	**NUMERICAL EQUIVALENT**
Number of Season Subscribers	5,333
Plus Number of Single Ticket Purchasers	+13,500
Equals Total Number of Patrons Paying Full Price	17,033
Divided by Total Mainstage Attendance	/26,841
Equals	.6346 (rounded 4 places past the decimal) or **63%**

These computations and the inferences associated therewith lead me to conclude that VGT's theater operations for the 1994 assessment year were geared primarily toward presenting professional theater presentations to those who could afford to purchase full-price theater tickets rather than accommodating those who could not. Thus, its property was not "actually and exclusively used for charitable or beneficent purposes," as required by 35 **ILCS** 200/15-65, during that time.

The record also demonstrates that the expenses associated with VGT's studio theater, tour and Theater Center, (which is the instructional component of its programming), were incidental to those associated with its mainstage theater. Specifically:

EXPENSE	AMOUNT	% OF TOTAL EXPENSES	% COMPARED TO EXPENSES ASSOCIATED WITH MAINSTAGE THEATER
Mainstage Theater	$751,032.00	64%	100%
Playwright Development	$20,880.00	2%	3%
Studio	$38,311.00	3%	5%
Theater Center	40,478.00	3%	5%
Tour	16,985.00	1%	2%
Unspecified Supporting Services	$299,084.00	26%	40%
TOTAL EXPENSES	$1,166,770.00		

R. p. 157

The above chart discloses that many of the activities which VGT posits provide evidence of "charitable," "beneficent" and/or "educational" uses are incidental to those associated with its non-exempt mainstage theater. Consequently, I cannot conclude that VGT's portion of the subject property satisfied the "exclusive use" requirements contained in Sections 200/15-65 and 200/15-35 during the 1994 tax year.

Based on the above considerations, I conclude that VGT's exemption claim fails for lack of exempt use, a necessary requirement for the tax exemption sought. I further conclude that, due to this lack of exempt use, an *arguendo* finding that VGT is similarly situated to Ravinia, if only in the sense that VGT qualifies as an "institution of public charity," is of no impact on the ultimate result of this case. Therefore, the Department's determination denying the subject

property exemption from 1994 real estate taxes under Sections 200/15-65 and 200/15-35 should be affirmed.

WHEREFORE, for the reasons stated above, it is my recommendation that real estate identified by Cook County Parcel Index Number 14-33-110-003 not be exempt from 1994 real estate taxes.

Respectfully Submitted,

Date	Alan I. Marcus, Administrative Law Judge

Adopted and Approved by:

Date	Kenneth E. Zehnder, Director of Revenue